

Sponsored By: Garrett
Planning Commission Public Hearing Date: April 17, 2023
City Council Public Hearing Date: May 9, 2023
June 27, 2023
Enactment Date: June 27, 2023

**CITY OF MARATHON, FLORIDA
ORDINANCE 2023-07**

AN ORDINANCE OF THE CITY OF MARATHON, FLORIDA AMENDING CHAPTER 107, ARTICLE 2, ENTITLED "TRANSFER OF BUILDING RIGHTS", AND INTENDING TO MODIFY SECTION 107.15 ENTITLED "SITE CRITERIA"; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS AND ORDINANCES INCONSISTENT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR INCLUSION IN THE CODE OF ORDINANCES, CITY OF MARATHON, FLORIDA; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the "City") has adopted a Comprehensive Plan which has been found to be in compliance by the State Department of Economic Opportunity ("DEO"), pursuant to Chapters 163 and 380, Florida Statutes; and

WHEREAS, it is the City's intent to amend the LDRs to ensure protection of environmentally sensitive lands, while encouraging infill developments; and

WHEREAS, the City does not want to unduly constrain development within the City of Marathon, so long as the growth is managed and environmentally appropriate; and

WHEREAS, the City Council finds it necessary, desirable, and proper to adopt the amendments to the Land Development Regulations corresponding to a similar amendment to the City's Comprehensive Plan to reflect changing conditions, pursuant to Sections 163.3191 and 163.3178(2)(f) Florida Statute.; and

WHEREAS, this Ordinance, thus passed at its second reading, shall be transmitted to DEO for review and approval,

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA THAT

~~Strikethrough~~ = deletion **bold underline** = addition

SECTION 1. The above recitals are true, correct, and incorporated herein by this reference.

SECTION 2. Amend the Land Development regulations, Chapter 107, "General Development Standards," Article 2, "Transfer of Building Rights," Section 107.15:

Section 107.14. Site Criteria.

A. Sending Site Criteria:

1. The parcel must have a documented building right.
2. The sending site shall not have any open permits or active code violations.
3. All bonds, assessments, back city taxes, fees, and liens (other than mortgages) affecting the parcel shall be paid in full prior to recordation of the warranty deed for the transfer of the building rights.

B. Receiving Site Criteria: The parcel must:

1. Be classified by the City Biologist as ~~less~~ **not more** environmentally sensitive than the sending site, as scored using the BPAS scoring criteria, established in Article 1 of this Chapter applicable to the type of use;
2. Be zoned to allow the requested use; and
3. Meet all provisions of the LDRs and the Comprehensive Plan relating to the type and magnitude of the proposed development.

SECTION 3. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION 4. The provisions of this Ordinance constitute an amendment to the Land Development Regulations as defined by State law. Accordingly, the City shall forward a copy of this Ordinance to the Department of Economic Opportunity for review and approval pursuant to Sections 380.05(6) and (11), Florida Statutes.

SECTION 5. This Ordinance shall be effective immediately upon approval by the Department of Economic Opportunity pursuant to Chapters 163 and 380, Florida Statutes and final adoption of Ordinance 2023-06.

ENACTED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 27TH DAY OF JUNE 2023.

THE CITY OF MARATHON, FLORIDA



Luis Gonzalez, Mayor

¹Additions to existing text are shown by underline/red print; deletions are shown as ~~strikethrough~~

AYES: Smith, Landry, Matlock, Still, Gonzalez
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier

Diane Clavier, City Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE
AND RELIANCE OF THE CITY OF MARATHON, FLORIDA ONLY:**

Steven Williams

Steven Williams, City Attorney

STATE OF FLORIDA
DEPARTMENT OF COMMERCE

In re: A LAND DEVELOPMENT REGULATION
ADOPTED BY CITY OF MARATHON,
ORDINANCE NO. 2023-07

FINAL ORDER REJECTING CITY OF MARATHON ORDINANCE NO. 2023-07

The Department of Commerce¹ (the “Commerce”) hereby issues its Final Order, pursuant to Section 380.05(6), Florida Statutes, rejecting land development regulations adopted by the City of Marathon (the “City”), Ordinance No. 2023-07 (the “Ordinance”).

FINDINGS OF FACT

1. The Florida Keys Area is designated by Section 380.0552, Florida Statutes, as an area of critical state concern. The City is a local government within the Florida Keys Area.
2. The Ordinance was adopted by the City on June 27, 2023 and rendered to Commerce on July 11, 2023.
3. The Ordinance amends Chapter 107, Article 2, Section 107.15 of the City’s Land Development Code to modify the provisions regarding site criteria for transfer of building rights to require a parcel to be “classified as not more environmentally sensitive”, instead of less environmentally sensitive, than the sending site by the City Biologist.

CONCLUSIONS OF LAW

4. Commerce is required to approve or reject land development regulations that are adopted by any local government in an area of critical state concern. *See* Section 380.05(6), Florida Statutes.

¹ On July 1, 2023, the Florida Department of Economic Opportunity was renamed to the Florida Department of Commerce (“Commerce”). Effective July 1, 2023, all references to “Department of Economic Opportunity” or “DEO” were hereby replaced with “Florida Department of Commerce” or “Commerce” as appropriate.

5. “Land development regulations” include local zoning, subdivision, building, and other regulations controlling the development of land. Section 380.031(8), Florida Statutes. The regulations adopted by the Ordinance are land development regulations.

6. The Ordinance is inconsistent with the City’s Comprehensive Plan as required by Section 163.3177(1), Florida Statutes, generally, and is specifically inconsistent with Policy 1-3.5.16, and Policy 1-3.3.1.

7. All land development regulations enacted, amended, or rescinded within an area of critical state concern must be consistent with the principles for guiding development for that area. *See* Section 380.05(6), Florida Statutes. The Principles for Guiding Development for the Florida Keys Area of Critical State Concern are set forth in Section 380.0552(7), Florida Statutes.

8. The Ordinance is inconsistent with the Principles for Guiding Development in Section 380.0552(7), Florida Statutes and is specifically inconsistent with the following Principles:

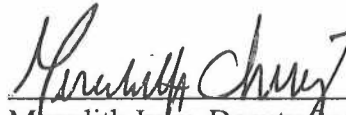
- (a) Strengthening local government capabilities for managing land use and development so that local government is able to achieve these objectives without continuing the area of critical state concern designation.
- (b) Protecting shoreline and marine resources, including mangroves, coral reef formations, seagrass beds, wetlands, fish and wildlife, and their habitat.
- (c) Protecting upland resources, tropical biological communities, freshwater wetlands, native tropical vegetation (for example, hardwood hammocks and pinelands), dune ridges and beaches, wildlife, and their habitat.
- (d) Ensuring the maximum well-being of the Florida Keys and its citizens through sound economic development.
- (e) Limiting the adverse impacts of development on the quality of water throughout the Florida Keys.

- (n) Protecting the public health, safety, and welfare of the citizens of the Florida Keys and maintaining the Florida Keys as a unique Florida resource.

WHEREFORE, IT IS ORDERED that Commerce finds that the City of Marathon Ordinance No. 2023-07 is inconsistent with the City of Marathon's Comprehensive Plan and the Principles for Guiding Development for the Florida Keys Area of Critical State Concern and is hereby REJECTED.

This Final Order becomes final 21 days after publication in the Florida Administrative Register unless a petition is timely filed as described in the Notice of Administrative Rights below.

DONE AND ORDERED in Tallahassee, Florida.



Meredith Ivey, Deputy Secretary
Division of Community Development
Florida Department of Commerce

NOTICE OF ADMINISTRATIVE RIGHTS

ANY PERSON WHOSE SUBSTANTIAL INTERESTS ARE AFFECTED BY THIS FINAL ORDER HAS THE OPPORTUNITY FOR AN ADMINISTRATIVE PROCEEDING PURSUANT TO SECTION 120.569, FLORIDA STATUTES.

FOR THE REQUIRED CONTENTS OF A PETITION CHALLENGING AGENCY ACTION, REFER TO RULES 28-106.104(2), 28-106.201(2), AND 28-106.301, FLORIDA ADMINISTRATIVE CODE.

DEPENDING ON WHETHER OR NOT MATERIAL FACTS ARE DISPUTED IN THE PETITION, A HEARING WILL BE CONDUCTED PURSUANT TO EITHER SECTIONS 120.569 AND 120.57(1), FLORIDA STATUTES, OR SECTIONS 120.569 AND 120.57(2), FLORIDA STATUTES.

ANY PETITION MUST BE FILED WITH THE AGENCY CLERK OF THE FLORIDA DEPARTMENT OF COMMERCE WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER. A PETITION IS FILED WHEN IT IS RECEIVED BY:

AGENCY CLERK
FLORIDA DEPARTMENT OF COMMERCE
OFFICE OF THE GENERAL COUNSEL
107 EAST MADISON ST., MSC 110
TALLAHASSEE, FLORIDA 32399-4128
FAX 850-921-3230

YOU WAIVE THE RIGHT TO ANY ADMINISTRATIVE PROCEEDING IF YOU DO NOT FILE A PETITION WITH THE AGENCY CLERK WITHIN 21 CALENDAR DAYS OF THE FINAL ORDER BEING PUBLISHED IN THE FLORIDA ADMINISTRATIVE REGISTER.

CERTIFICATE OF FILING AND SERVICE

I HEREBY CERTIFY that the original of the foregoing Final Order has been filed with the undersigned designated Agency Clerk, and that true and correct copies have been furnished to the following persons by the methods indicated this 7th day of September 2023.

/s/ Karis De Gannes
Agency Clerk
Florida Department of Commerce
107 East Madison Street, MSC 110
Tallahassee, FL 32399-4128

By U.S. Mail:

The Honorable Luis Gonzalez, Mayor
City of Marathon, City Council
9805 Overseas Highway
Marathon, FL 33050

Diane Clavier, City Clerk
City of Marathon, City Clerk
9805 Overseas Highway
Marathon, FL 33050

Brian Shea, Planning Director
City of Marathon, Planning Department
9805 Overseas Highway
Marathon, FL 33050